

REPRESENTATIVE FOR PETITIONERS:

Randolph G. Holt, Parr Richey Obremskey Frandsen & Patterson¹

REPRESENTATIVE FOR RESPONDENT:

Lisa Garaffolo, Boone County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Daniel and Andrea Montgomery,	)	Petition No.:	06-010-08-2-8-00001
)		
Petitioners,	)	Parcel No.:	010-07540-04
)		
v.)		
)		
Boone County Property Tax	)	County:	Boone
Board of Appeals	)	Township:	Union
)		
Respondent.	)	Assessment Years:	2005, 2006, 2007 and 2008

Appeal from the Final Determination of the
Boone County Property Tax Assessment Board of Appeals

July 20, 2009

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes as follows:

¹ Mr. Holt failed to file a notice of appearance as required by the Board's procedural rules. The Petitioners, however, were present at the hearing and the Respondent did not object to the representation. Therefore, the Board allowed Mr. Holt to proceed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board was whether the managers' residence located on airport property qualifies for exemption under Indiana Code § 8-22-3-28.

PROCEDURAL HISTORY

2. Daniel and Andrea Montgomery own a home located at 11329 East State Road 32 in Zionsville, which is on the grounds of the Indianapolis Executive Airport (formerly known as the Indianapolis Terry Airport) (the Airport). Mr. Montgomery testified that the Petitioners "timely filed Applications for Property Tax Exemption" for calendar years 2003, 2004, 2005 and 2006. *Petitioners' Post-Hearing Brief (the Brief) at 1.* According to the Petitioners, these applications were never denied. *Id.* On March 5, 2007, and on September 15, 2008, the Petitioners again filed Form 136, Applications for Property Tax Exemption for tax years 2007 and 2008 respectively seeking an exemption for all of their leased property at the Airport.
3. For the March 1, 2004, tax year, the land and improvements were determined to be 100% exempt. On May 7, 2008, the Boone County Property Tax Assessment Board of Appeals (PTABOA) issued a Form 115, Notice of Final Assessment Determination assessing the managers' residence for \$238,700 for the March 1, 2006, assessment year. There is no record of any determination on the Petitioners' exemption requests for the 2005 or 2006 tax years. Also on that date, the PTABOA issued a Form 120, Notice of Action on Exemption Application, determining that the home was 100% taxable for the March 1, 2007, tax year. On September 30, 2008, the PTABOA issued a Form 120 determining that the property's improvements were 13.6% taxable for the March 1, 2008, assessment date. This determination reflected a \$248,300 assessment for the house and a \$1,575,300 assessment for other improvements that the PTABOA deemed to be exempt.

4. The Petitioners filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment on June 4, 2008, for tax years 2005, 2006 and 2007. The Petitioners then filed a Form 132 Petition for Review of Exemption, on October 16, 2008, for the March 1, 2008, assessment date. Despite the confusion in the documentation, the parties agreed that the Board's determination would apply to the 2005, 2006, 2007 and 2008 tax years.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the Board held a hearing on April 21, 2009, in Lebanon, Indiana before Alyson Kunack, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3.

6. The following persons were sworn and presented testimony at the hearing:

For the Petitioners:

Daniel and Andrea Montgomery, the Petitioners

For the Respondent:

Lisa Garaffolo, Boone County Assessor
Jeffrey B. Wolfe, PTABOA Member

7. The Petitioners presented the following exhibits:²

Petitioners Exhibit 1: Resolution of the Board of Aviation Commissioners of Hamilton County creating the Hamilton County Aviation Authority

Petitioners Exhibit 2: Agreement for the Operation and Maintenance of the Indianapolis Terry Airport

Petitioners Exhibit 3: Lease Agreement between Montgomery Aviation and the Hamilton County Aviation Board

Petitioners Exhibit 4: Form 136, Application for Exemption dated September 8, 2004

Petitioners Exhibit 5: Form 120, Notice of Action on Exemption Application dated October 24, 2004

Petitioners Exhibit 7: Form 11, Notice of Assessment dated November 1, 2006

Petitioners Exhibit 8: Application for Property Tax Exemption dated March 5, 2007

Petitioners Exhibit 9: Boone County Appeal Worksheet dated November 11, 2007

² The Petitioner did not submit an Exhibit 6. Two exhibits, however, were labeled "Exhibit 13." These exhibits have been relabeled 13A and 13B for clarification.

Petitioners Exhibit 10: Notice of Hearing on Petition from the Boone County PTABOA, dated January 4, 2008
Petitioners Exhibit 11: Form 115, Notification of Final Assessment Determination dated May 12, 2008
Petitioners Exhibit 12: Notice of Action on Exemption Application for 2007
Petitioners Exhibit 13A: Notice of Action on Exemption Application for 2007
Petitioners Exhibit 13B: Action by the County Property Tax Assessment Board of Appeals dated May 7, 2008
Petitioners Exhibit 14: Form 131, Petition to the Indiana Board of Tax Review for Review of Assessment
Petitioners Exhibit 15: Indiana Code §§ 8-22-2 and 8-22-3
Petitioners Exhibit 16: Electronic mail message from Barry Wood, Department of Local Government Finance (DLGF)
Petitioners Exhibit 17: Form 132, Petition to the Indiana Board of Tax Review for Review of Exemption
Petitioners Exhibit 18: Tax record for the subject property

8. The Respondent presented the following exhibits:

Respondent Exhibit 1: Property Record Card (PRC) for the subject property's 2007 assessment
Respondent Exhibit 2: Certificate of Occupancy dated March 4, 2004
Respondent Exhibit 3: Indiana Code § 8-22-2-12
Respondent Exhibit 4: Form 11, Notice of Assessment dated November 1, 2006
Respondent Exhibit 5: Application for Property Tax Exemption dated March 5, 2007
Respondent Exhibit 6: Letter from Petitioners' counsel dated June 3, 2008
Respondent Exhibit 7: Form 131, Petition to the Indiana Board of Tax Review for Review of Assessment dated March 5, 2007
Respondent Exhibit 8: Application for Property Tax Exemption dated September 24, 2008
Respondent Exhibit 9: Form 120, Notice of Action on Exemption Application, dated September 30, 2008
Respondent Exhibit 10: Form 120, Notice of Action on Exemption Application, dated May 9, 2008
Respondent Exhibit 11: Form 120, Notice of Action on Exemption Application, dated May 9, 2008
Respondent Exhibit 12: Form 120, Notice of Action on Exemption Application, dated May 9, 2008
Respondent Exhibit 13: Letter from Petitioners' counsel dated May 19, 2008
Respondent Exhibit 14: Electronic mail message from Barry Wood, DLGF
Respondent Exhibit 15: Notice of Hearing
Respondent Exhibit 16: Amendment to Lease and Consent to Mortgage

9. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – The Form 132 Petition
 - Board Exhibit B – Notice of Hearing dated March 4, 2009
 - Board Exhibit C – Hearing Sign-in sheet
10. The Petitioners submitted a post-hearing brief on May 11, 2009.
11. The subject property is the managers’ residence at the Indianapolis Executive Airport located at 11329 East State Road 32 in Zionsville, Union Township, Boone County.
12. The ALJ did not conduct an on-site inspection of the subject property.
13. The PTABOA determined the residence to be 100% taxable. The Petitioners contend the house should be 100% exempt.

JURISDICTIONAL FRAMEWORK

14. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER’S BURDEN

15. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington*

Twp. Assessor, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also*, *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

16. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
17. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

BASIS FOR EXEMPTION

18. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.
19. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *See generally, National Association of Miniature Enthusiasts v. State Board of Tax Commissioners*, 671 N.E.2d 218 (Ind. Tax Ct. 1996).
20. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d at

220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).

21. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

PARTIES' CONTENTIONS

22. The Petitioners contend that the managers' residence is eligible for exemption because it is an improvement on land leased from an airport authority. *Holt argument*. In addition, the Petitioners argue, the residence serves an aviation-related purpose, because it is necessary to fulfill the Petitioners' contractual obligations to the airport authority. *Id.*
23. The Petitioners presented the following evidence in regard to this issue:
- a) The Hamilton County Aviation Board (Aviation Board) purchased the Airport in 2003.³ *Holt argument*. At that time, the Petitioners entered into an agreement with the Aviation Board to manage the property. *D. Montgomery testimony; Petitioners Exhibit 2*. As part of that agreement, the Aviation Board leased three acres of land to the Petitioners for the construction of a managers' residence. *D. Montgomery testimony; Petitioners Exhibit 2, Section 3.07; Petitioners Exhibit 3, Schedule 2.02*.
 - b) The agreement between the Aviation Board and the Petitioners provides that the Airport must be open for the take off and landing of aircraft during the same

³ The Hamilton County Aviation Board became the Hamilton County Aviation Authority in 2007. The Aviation Authority assumed all the assets and duties of the Aviation Board at that time.

hours as Indianapolis International Airport. *Petitioners Exhibit 2, Section 12.01.* According to Mr. Montgomery, those hours of operation are “presently 24 hours a day, seven days a week.” *D. Montgomery testimony.* Further, the agreement requires that an employee must be present at the residence whenever the Petitioners are away. *Petitioners Exhibit 2, Section 3.07.* The purpose of this requirement, according to the Petitioners, “is to provide continuous coverage at the Airport for airport safety, security and customer service.” *Brief at 4.*

- c) The agreement also specifies that upon its termination, the Aviation Board must pay the Petitioners “the fair market value of any additions or improvements made by the manager under any other agreements.” *D. Montgomery testimony; Petitioners Exhibit 2, Section 16.03.* A similar provision was included in the previous lease agreement signed by the Petitioners and the Aviation Board. *Petitioners Exhibit 3, Section 7.01.* Thus, the Petitioners argue, “Upon termination of the Management Agreement, the Petitioners are obligated to sell and the Authority is obligated to purchase the Managers Residence which would then be available for use by the new Airport manager.” *Brief at 5.*
- d) Prior to the construction of the current managers’ residence in 2004, an older residence had been located on the property which was razed. *D. Montgomery testimony.* According to Mr. Montgomery, the previous residence was exempt. *Id.; Petitioners Exhibit 5.* Mr. Montgomery testified that the Petitioners continued to file exemption applications, but he argued that they received no notice that their exemption request was denied. *Id.; Petitioners Exhibits 4, 7, and 8.*

- 24. The Respondent contends the residence is not exempt because the Petitioners have a personal mortgage in their name on the residence. *Garaffolo testimony.* According to Ms. Garaffolo, the PTABOA primarily based its decision on advice from the Department of Local Government Finance and other counties. *Id.; Respondent Exhibits 14 and 16.*

ANALYSIS

25. The Petitioners contend the managers' residence should be exempt under Indiana Code §8-22-3-28(b). *Holt argument; Petitioners Exhibit 19*. Indiana Code §8-22-3-28(b) states that “[t]he leasehold estate of any lessee created pursuant to a lease by the board of its aviation related property or facilities, together with any permanent structure erected on the property by the lessee is exempt from property taxation.” The Petitioners argue that this provision does not require that the property be used for an aviation-related purpose to be exempt. The Board need not decide that issue, however, because the Board finds that the residence at issue here serves an aviation-related purpose.
26. Mr. Montgomery testified that he must be on the premises 24 hours a day, seven days a week, to provide security and service. *D. Montgomery testimony*. If he is unable to be at the airport, a qualified employee must be present in his absence, and that employee stays in the managers' residence while on-duty. *Id.* These requirements are also contained in the lease agreement and the operations agreement. *Petitioners Exhibit 2, Section 16.03; Petitioners Exhibit 3, Section 7.01*. Therefore, the evidence presented establishes an aviation-related purpose for the residence.
27. This finding is consistent with the Board's earlier determinations in several cases interpreting Indiana Code §6-1.1-10-15(c), including *Rich Davidson d/b/a Lee Bottom Airport v. Jefferson County Property Tax Board of Appeals*, Petition No. 39-012-05-2-8-00001 *et al.*, (August 28, 2006) (The Board found that “providing living quarters for the airport manager is a reasonably necessary use” because “the airport must remain open at all times and must have constant supervision”); and *Steinle v. Newton County Assessor*, Petition Nos. 56-012-08-2-8-00001 and -00002 (March 12, 2009) (The Board found the Petitioner's residence to be a reasonably necessary use where the Petitioner testified that the presence of the house is a mitigating characteristic or security enhancer, according to the Department of Homeland Security and the house enabled him to oversee the airport at all times and increased security for the premises and the aircraft stored at the airport).

28. Once the Petitioners raise a prima facie case for exemption, the burden shifts to the Respondent to rebut or impeach the Petitioners' case. Here, the Respondent argues the residence should be taxable because the Petitioners have a personal mortgage on the home. *Garaffolo testimony; Respondent Exhibit 16*. Indiana Code §8-22-3-28(b), however, does not address financing in its provisions. It simply requires that property or improvements be leased from an airport authority. The Board found that the improvements are leased from the Airport Board and are used for an aviation-related purpose. Therefore, the Respondent failed to rebut the Petitioners' prima facie case.

SUMMARY OF FINAL DETERMINATION

29. The Petitioners raised a prima facie case that they were entitled to an exemption for the managers' residence. The Respondent failed to rebut the Petitioners' case. The Board finds in favor of the Petitioners and determines the managers' residence to be 100% exempt for 2005, 2006, 2007 and 2008.

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.